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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 363

WILLIAM R. SAMPSELL, RAY C. RESH, EARL ALBERTSON, JUNIOR A. AVERS, WALLACE L. AVERS, M. S. BENNETT, HUBERT BALL, C. F. BISER, GEORGE D. BEAL, THOMAS P. COUNIHAN, J. D. CLARK, MAURICE D. CLEM, LOUIS R. DAVIS JAMES F. DECKER, C. V. DEVELBISS, H. H. GROVES, KENNETH HOSTETLER, ELMER R. HEITT, C. O. KEARCHNER, MAHLAN A. LEATHERMAN, HAROLD C. LEGEER, M. F. MILLER, ROBERT A. PANCAKE, GLENN W. STRICKLER, FRANK L. K. SMITH, FRANK A. TROZZO, E. B. WISEMAN, I. M. WATKINS, C. M. KENNEDY, G. H. R. DAVIS, H. M. SAVILLE, AND G. B. JONES,

Petitioners,

VS.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
A BODY CORPORATE
AND
BROTHERHOOD OF RAILROAD TRAINMEN,
AN UNINCORPORATED ASSOCIATION,
AND
GENERAL GRIEVANCE COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, BALTIMORE AND OHIO RAILROAD SYSTEM, AN UNINCORPORATED ASSOCIATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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INDEX

Table of Contents

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Effect of the granting of certiorari in Pennsylvania R. Co. v. Rychlik	3
As to Question 1	4
As to Question 2	4
As to Question 3	5
Statutes Involved	7
Statement of the Case and Reasons for Granting Writ	7
1. Brief Statement of Facts	7
2. Constitution of the System Board	8
3. Petitioners' Transfer from Brotherhood to U.R.O.C.	12
4. Subsequent Denial of Membership in Brotherhood	13
5. Membership in Other National Unions	16
Conclusion	17

Appendices

Appendix A. Statute (Tit. 45, U.S.C., §§152 & 153)	21
Appendix B. Opinion of U. S. Court of Appeals, 4th Circuit	28
(Note: Opinion of the U.S. District Court for District of Md. appears at p. 29 of Appellant's Appendix in the Court of Appeals)	
Appendix C. Judgment of the U.S. Court of Appeals for the 4th Circuit	30

Table of Cases

	PAGE
Alabaugh v. Baltimore & O. R. Co., 125 F. Supp. 401, aff. (4 Circ.) 222 F. 2d 861, cert. den. 350 U.S. 831	6, 18
Atlantic C. L. R. Co. v. Pope, (4 Circ.) 119 F. 2d 39	5, 9
Bohnen v. Baltimore & O. Chic. Term, 125 F. Supp. 463	18
Dwellingham v. Thompson, 91 F. Supp. 787, aff. (8 Circ.) 198 F. 2d 591	5, 9
Edwards v. Capital Airlines, (App. D.C.) 176 F. 2d 55	4
Johns v. Baltimore & O. R. Co., 118 F. Supp. 317, aff. 347 U.S. 964 (mem.)	9
Miller v. Pennsylvania R. Co., (6 Circ.) No. 12,679, cert. pend. No. 331, Oct. Term, 1956	5
Pennsylvania R. Co. v. Rychlik, cert. gr. 351 U.S. 930 to 2d Circ., 229 F. 2d 171	3, 11
Pigott v. Detroit, T. & I. R. Co., (6 Circ.) 221 F. 2d 736	5, 6, 9
Primakow v. Railway Exp. Agency, 56 F. Supp. 413	5, 9
Railway Employees' Dept. v. Hanson, 351 U.S. 225	15, 17
Rychlik v. Pennsylvania R. Co., (2 Circ.) 229 F. 2d 171, cert. gr. 351 U.S. 930	4, 5, 9
Steele v. Louisville & N. R. Co., 323 U.S. 192	11
United R. O. C. v. Northern P. R. Co., 208 F. 2d 135, cert. den. 347 U.S. 929	9
United R. O. C. v. Pennsylvania R. Co., (7 Circ.) 212 F. 2d 938	5, 9
United R. O. C. v. Wyer, 115 F. Supp. 359, aff. (2 Circ.) 205 F. 2d 153, cert. den. 347 U.S. 929	9

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OPINIONS BELOW

The opinion of the United States Court of Appeals is reprinted in Appendix B; it is reported unofficially in 30 Labor Cases, par. 70,122, but has not yet been officially reported. The opinion of the United States District Court for the District of Maryland (reprinted at p. 29 of Appellants' Appendix in the Court of Appeals, copies of which are furnished with this Petition), is unpublished.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit, which is here sought to be reviewed, was dated and entered on July 13, 1956. The jurisdiction of this Court is invoked under U.S. Code, Title 28, Section 1254(1).

QUESTIONS PRESENTED

The case arises under a "union shop agreement" adopted pursuant to the Union Shop Amendment to the Railway Labor Act (U.S. Code, tit. 45, sec. 152, Eleventh). The major issues are:

Question 1. Where a union shop agreement creates a system board of adjustment, consisting of a representative of the union and a representative of the carrier (a third or "neutral" member being appointed only in case of disagreement), as "the sole and exclusive method for determining disputes" under such agreement, does it thereby withdraw jurisdiction from the National Railroad Adjustment Board?

Question 2. Where such system board is specifically granted final and exclusive appellate jurisdiction of disputes between a union and non-member employees, but only on appeal by the union, and such employees have fully exhausted the administrative remedies afforded them under the hearing procedure subordinate to the system board set up in the agreement, are they entitled to judicial review of the administrative decisions rendered against them?

Question 3. Under the provision of the Union Shop Amendment that membership in another union "national in scope" shall prevent discharge of an employee for non-membership in the bargaining union, should the phrase "national in scope" be construed according to the natural meaning of the words or is it intended to have a technical, restricted meaning?

(The case also involves some other issues, to be mentioned subsequently).

EFFECT OF THE GRANTING OF CERTIORARI IN PENNSYLVANIA RAILROAD COMPANY v. RYCHLIK (Certiorari granted May 14, 1956, 351 U.S. 930, No. 821, October Term, 1955).

From the foregoing questions, it will readily be seen that at least two of the issues in the instant case are substantially similar to, if not identical with, those in the pending case of *Pennsylvania Railroad Co. v. Rychlik,*

supra, in which this Court has granted the writ of certiorari to the Court of Appeals for the Second Circuit, presumably because of a conflict in the rules prevailing in two or more circuits. In this case, arising in the Second Circuit, and in a similar case in the Sixth Circuit a system board of adjustment, consisting of a carrier and a union representative, had been created. In each, employees cited for noncompliance with a union shop agreement were ordered discharged after exhausting their administrative remedies through a hearing before the system board. In each, judicial review was sought in a proceeding to enjoin discharge, but with different results.

As to Our Question 1

Both cases agreed that the jurisdiction conferred on the system board was in substitution for the jurisdiction of the National Railroad Adjustment Board. (In the instant case, however, the Court of Appeals for the Fourth Circuit held that the National Adjustment Board had "exclusive jurisdiction", notwithstanding the creation of the system board.)

As to Our Question 2

In *Rychlik v. Pennsylvania R. Co.*, (1956) 229 F. 2d 171, the Court of Appeals for the Second Circuit unanimously reversed a decision denying relief, taking the position that in view of the constitution of the system board, its decision must be reviewable on the merits, in order to preserve the employee's basic right to a decision by a competent and impartial tribunal. The same view was taken by the Court of Appeals for the District of Columbia in *Edwards v. Capital Airlines*, (1949) 176 F. 2d 55, which arose under the identical system board procedure provided for air carriers under Section 184 of Title II of the Railway Labor Act (U.S. Code, tit. 45).

But in *Pigott v. Detroit, T. & I. R. Co.*, (1955) 221 F. 2d 736, the Court of Appeals for the Sixth Circuit took the opposite point of view. That Court held that the administrative decision was final and binding. A vigorous dissent was entered by Judge Allen, based on grounds similar to those stated by Judge Learned Hand in the *Rychlik* case. The Sixth Circuit has recently affirmed the *Pigott* case in *Miller v. Pennsylvania R. Co.* (No. 12,679, June 4, 1956, unreported; cert. pending, No. 331, Oct. Term, 1956).

The Fourth Circuit's decision in the instant case aligns it with the position taken by the Sixth Circuit in the *Pigott* case, although its brief opinion indicates that it regarded the National Railroad Adjustment Board as having jurisdiction notwithstanding the creation of the system board, and it therefore concluded "that administrative remedies had not been exhausted". In taking this novel position it apparently diverges from all other authorities;[1] and its decision actually denies any review to petitioners who have in fact pursued every administrative remedy allowed them under the terms of the agreement setting up the system board procedure.

As to Our Question 3

In *Rychlik v. Pennsylvania R. Co., supra*, the Second Circuit held that the District Court should decide as a

[1] Where a system board has been created, the National Railroad Adjustment Board does not have jurisdiction. *Pigott v. Detroit, T. & I. R. Co., supra*, (6th Circ. 1955) 221 F. 2d at p. 741; *Rychlik v. Pennsylvania R. Co., supra*, (2d Circ. 1956) 229 F. 2d at p. 173 (where the matter is fully discussed); *United Railroad Operating Crafts v. Pennsylvania R. Co.*, (7th Circ., 1954) 212 F. 2d 938. The Court of Appeals for the Fourth Circuit has recognized the same principle. *Atlantic Coast Line R. Co. v. Pope*, (1941) 119 F. 2d 39. To the same effect are *Primakow v. Railway Exp. Agency*, (D. Ct. E.D. Wis. 1943) 56 F. Supp. 413; *Dwellingham v. Thompson*, (D. Ct. E.D. Mo. 1950) 91 F. Supp. 787, affd. (8th Circ. 1952) 198 F. 2d 591.

matter of fact whether UROC, a union to which the employees belonged, was "national in scope", so as to preclude their discharge for non-membership in the Brotherhood.

In *Pigott v. Detroit, T. & I. R. Co., supra,* the Sixth Circuit held that the final determination of this identical question, the status of UROC, was within the exclusive province of the system board and not subject to judicial review. The Court did, however, quote with approval a passage from the opinion of Judge Levin in the District Court, in which he stated that only a union which had qualified for the selection of National Adjustment Board members could be "national in scope", and that the system board had therefore reached the only possible conclusion which it could reach.

In *Alabaugh v. Baltimore & O. R. Co.,* 222 F. 2d 861 (1955), cert. den. 350 U.S. 831, the Fourth Circuit held that the question whether UROC was "national in scope" must be referred to the National Railroad Adjustment Board, notwithstanding the creation of a system board; and it specifically affirmed that ruling in the instant (*Sampsell*) case.

In the light of these three different rules prevailing in three circuits, little order or consistency can be expected in the rulings of the various boards and courts affecting the status and livelihood of the thousands of railroad men who, unhappily, joined UROC believing in good faith that it was national in scope. Their status will remain obscure and confused until this Court has determined the correct rule to be applied throughout the nation.

STATUTES INVOLVED

The Jurisdiction of the District Court

U.S. Code, tit. 28, sec. 1337 provides:

> "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

The Statute Upon Which Petitioners' Rights Are Based

U.S. Code, tit. 45, sec. 152, Eleventh, the so-called "Union Shop Amendment" to the Railway Labor Act, appears in full in Appendix A, *infra*, together with other pertinent parts of secs. 152 and 153 of that Act. Petitioners' rights herein asserted are founded on these portions of the Railway Labor Act.

STATEMENT OF THE CASE AND REASONS FOR GRANTING THE WRIT

1. *Brief Statement of Facts*

Petitioners, railroad trainmen, were cited for "non-compliance" with a union shop agreement. The agreement created a system board of adjustment having "sole and exclusive jurisdiction" of disputes thereunder, with provision for original administrative hearings by the carrier. The Brotherhood might appeal to the system board, but otherwise the decision on the appellate administrative hearing was "final and binding". In such hearings petitioners raised the following defenses:

(a) That they had joined, and were at the time of citation members of, UROC, a newly created labor union, covering the railroad industry and nation-wide in its existence and operations;

(b) That, subsequent to their citation and before the order of discharge, they joined other unions admittedly "national in scope";

(c) That, subsequent to their citation and before the order of discharge, they requested the Brotherhood to reinstate them in membership;

(d) That membership in the Brotherhood was then denied them because of their union activity in UROC, the rival organization.

These defenses and others were ruled insufficient and they were ordered discharged. They then sought injunctive relief in the district court, alleging that their rights under the Railway Labor Act were infringed by their discharge.

2. *Constitution of the System Board*

The complaint (Applts. App. 12) alleges that "the union shop agreement provides for a local system board of adjustment whose jurisdiction is sole, final and exclusive and it denies to the plaintiffs any remedy to any other tribunal" (Par. 22). The fact of creation of a system board by the agreement is therefore admitted for purposes of the motion to dismiss upon which this case arises. The agreement itself is in the record (Applts. App. 17-22).

Sec. 153, *Second*, of the Railway Labor Act specifically authorizes such a "system board" to be established by agreement "for the purpose of adjusting and deciding disputes of the character specified in this section"; and by Sec. 153, *First*, the disputes over which it has jurisdiction are defined (in prescribing the jurisdiction of the National Railroad Adjustment Board) as including "the disputes between an employee or group of employees and a carrier

or carriers growing out of grievances or out of the interpretation or application of agreements concerning . . . working conditions".

These provisions of sec. 153 have been consistently interpreted by the courts (1) as generally granting primary jurisdiction to the National Adjustment Board of cases involving the discharge of employees for alleged violation of union shop agreements,[2] and (2) as depriving the National Adjustment Board of its jurisdiction in any labor dispute when a "system board" procedure for such disputes is set up pursuant to sec. 153, *Second*.[3]

The character of the "system board" procedure set up by the agreement in the present case is readily ascertained from an examination of Sections 5 and 8 of the agreement (Applts. App., 19-22). Under Section 5(b) and (c) the Brotherhood institutes a proceeding by advising the carrier "of any employee who by reason of failure to comply with the terms of this agreement is not entitled to continue in employment", and the carrier automatically discharges the employee unless, after notice, he requests a hearing. The carrier holds a hearing, if requested, and renders a decision. Either the employee or the Brotherhood may appeal from the decision to "the highest officer of the carrier designated to handle such appeals". It is further provided that the "decision on appeal shall be *final and binding* unless proceedings are instituted *by the Brotherhood*" (italics ours) "for further handling of the case under Section 8 of this agreement".

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[2] *Johns v. Baltimore & O. R. Co.*, 118 F. Supp. 317, aff. 347 U.S. 964 (mem.), 74 S. Ct. 776; *United R.O.C. v. Wyer*, 115 F. Supp. 359, aff. 205 F. 2d 153, cert. den. 347 U.S. 929; *United R.O.C. v. Northern Pac. R. Co.*, 208 F. 2d 135, cert. den. 347 U.S. 929.

[3] See cases cited *supra*, note 1 i.e., *Pigott v. Detroit T. & I. Co.; Rychlik v. Pennsylvania R. Co.; United Railroad Operating Crafts v. Pennsylvania R. Co.; Atlantic Coast Line R. Co. v. Pope; Primakow v. Railway Exp. Agency; Dwellingham v. Thompson.*

Section 8 sets up the system board of adjustment and directs that "the procedure provided for in this Section 8 shall be the sole and exclusive method for determining disputes under this agreement" (Applts. App. 22). This language is patently intended to substitute the jurisdiction of the system board for that of the National Adjustment Board pursuant to the statutory authority.

The system board consists of "one representative of the carrier involved and one representative of the Brotherhood". If the committee of two cannot reach a decision, "a neutral referee is to be selected by them; and if they are unable to agree on the third member, "either member of the committee may request the National Mediation Board to appoint such neutral referee". The decision of a majority shall be final and binding upon all parties. It may be commented that these clauses are fairly typical of the system boards which have been created pursuant to the Union Shop Amendment.

To summarize, Section 8, taken in conjunction with Section 5, gives the system board sole and exclusive jurisdiction, which, under the statute as uniformly interpreted, prevents any jurisdiction from attaching to the National Adjustment Board. Yet, as is clear from Section 5, access to this final system board may be had only at the will of the Brotherhood. Otherwise, declares the agreement, the decision of the carrier's "highest officer" is "final and binding".

Taking the agreement at its face value, petitioners did in fact exhaust their administrative remedies under this system board procedure when they completed the second round of appeal hearings before the "highest officer" (Complaint, Pars. 9-15, Applts. App. 8-9). Aside from the fact that this one-sided procedure of appeal is abhorrent to the

sense of justice and fair play, the agreement does clearly limit the administrative remedies of the petitioners to those which they have already pursued without result.[4] Petitioners have, accordingly, exhausted their administrative remedies by the precise terms of the system board procedure set up under the agreement.

The system board itself, having the ultimate right of decision if the employee had prevailed before the carrier, since the Brotherhood could then appeal to the board, is constituted in a manner similar to that in *Pennsylvania R. Co. v. Rychlik, supra*, No. 891, now pending in this Court on certiorari to the Court of Appeals of the Second Circuit (229 F. 2d 171).* To repeat, the board consists of "one representative of the carrier involved and one representative of the Brotherhood". If the committee of two cannot reach a decision, "a neutral referee shall be selected" by them; and if they are unable to agree on the third member, "either member of the committee may request the National Mediation Board to appoint such neutral referee". The decision of a majority shall be final and binding upon all parties.

Thus, this case is similar to the *Rychlik* case in that (1) the highest administrative body to which the petitioners' case could be appealed is a system board on which the Brotherhood controls one of two, or one of three members,

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[4] Respondents could not contend otherwise except by asserting that the agreement itself is illegal in providing that the carrier's decision on appeal shall be "final and binding" on the employee, though not on the Brotherhood, and in attempting thus to foreclose application by the employee to either the National Railroad Adjustment Board or system board. Respondents, who assert the agreement as the basis for discharge of petitioners, can scarcely be heard to complain of its illegality; and should they successfully do so, petitioners would have an incontestable basis for equitable relief against oppression under such an admittedly illegal agreement. *Steele v. Louisville & N. R. Co.*, (1944) 323 U.S. 192.

* Certiorari granted May 16, 1956, 351 U.S. 930.

so that pursuant to the views of the Court of Appeals of the Second Circuit, such board's decision would be fully reviewable by the courts; and (2) petitioners have gone as far toward reaching the system board as they are permitted to go by the terms of the agreement.

Concededly, there has been no actual hearing by the system board; but that is only because the agreement, while permitting the Brotherhood to appeal an adverse decision to the board, denies petitioners' right to do so. Indeed, this absence of mutuality and fairness, this clear evidence of an effort to curtail rights of the individual or the minority, in itself makes a strong appeal for intervention by a court of equity.

Expressed succinctly, the final administrative decision rendered against petitioners was rendered by a hearing officer, appointed by the carrier, who sat under a "sword of Damocles" held over him by the system board, so that, had he rendered a decision adverse to the Brotherhood, it would immediately have been reviewed by the system board on request of the Brotherhood; the system board itself being, under the decision in the *Rychlik* case, a fundamentally biased and partial tribunal, privately constituted, whose decision would be reviewable on the merits by the courts.

Thus, petitioners are in a worse plight under the union shop agreement in this case than was *Rychlik*, since they could not even carry their cause to the biased system board, although the Brotherhood would be permitted to do so.

3. *Petitioners' Transfer from Brotherhood to U.R.O.C.*

The Petitioners were members of the Brotherhood in good standing at the time of adoption of the Union Shop Agreement by the carrier and the Brotherhood on October 1, 1951, and for sixty days thereafter. Subsequently, in the

latter part of 1952 and the early part of 1953, they severally joined the United Railroad Operating Crafts, "a newly created labor union, covering the railroad industry and nation-wide in its existence and operations" (Complaint, Par. 16, Applts. App. 9). Nothing in the testimony affected or detracted from these allegations.

Petitioners thereafter permitted their membership in the Brotherhood to lapse for non-payment of dues, believing in good faith that "UROC" was "a labor union, national in scope, which would qualify under the said union shop provision of the Railway Labor Act (Sec. 152, Eleventh)". The Brotherhood, however, refused to recognize UROC as a union qualified under the Railway Labor Act on the basis mainly that it was not "national in scope". If it was found to be "national in scope", petitioners' membership therein would prevent their discharge for violation of the union shop agreement. The statute also permits free transfer, without penalty, from one "national in scope" union to another. It has never been determined in any judicial proceeding that UROC is not "national in scope"; and in every administrative body which has so held, the Brotherhoods have appointed and controlled one-half of the members.

4. *Subsequent Denial of Membership in Brotherhood*

Later, after much indecisive litigation involving the status of UROC, petitioners sought reinstatement in the Brotherhood.[5] There was a conflict in the testimony[6] as to

[5] Complaint, Pars. 16, 17, 19, Applts. App. 9-10.

[6] Testimony was taken, as the case was heard not only on the motion to dismiss but also on the plaintiffs' application for a preliminary injunction. The testimony dealt mainly with the question of alleged improprieties in the administrative hearings, with the plaintiffs' claim of de facto reinstatement and with special points applicable to particular plaintiffs. No testimony questioned the basic allegations of the complaint relied on in this petition, which were accordingly admitted for purposes of the motion to dismiss.

whether they achieved a de facto reinstatement, many o them having favorable petitions signed by a majority o members of their former local lodges. However, the Dis trict Court found as a matter of fact that they were not re instated. Thus, membership was denied them, and it i clear that membership was not available to them at th time when they requested reinstatement, being threatene with discharge for alleged violation of the union shop agree ment. In most cases, this was subsequent to the origina citation but in all cases it was prior to the final adminis trative decision.

The statute provides that a union shop agreement ma not require membership in the union negotiating such a agreement "with respect to employees to whom member ship is not available upon the same terms and condition as are generally applicable to any other member or wit respect to whom membership was denied or terminate for any reason other than the failure of the employee t tender the periodic dues, initiation fees and assessment . . . uniformly required as a condition of acquiring or re taining membership" (Sec. 152, *Eleventh*).

The complaint in this case, further, specifically alleges that membership in the union was denied petitioners be cause of their activities in the rival union, UROC, and not because of their failure to tender dues, initiation fees and assessments. In fact, their requests for reinstatement neces sarily comprised offers by each petitioner to meet what ever financial obligations were attached to membership. These offers were rejected.

The pertinent allegation of the complaint, not denied in the testimony, is as follows:

> "The plaintiffs' request for admission to and rein statement in the Brotherhood was ignored by the said

defendant Brotherhood because the plaintiffs had previously joined the United Railroad Operating Crafts, a competing railway labor organization and were active therein" (Applts. App. p. 10).

Thus, it is uncontested that the petitioners' request to be reinstated after citation was denied for a reason other than non-payment of dues, and that membership was not then available to them. Does this, under the statute, protect them against discharge?

This Court has recently sustained the constitutionality of the statute by construing it narrowly as (1) imposing only the obligation of financial support of the work of collective bargaining, apart from full membership and apart from support of other activities of the union, and (2) requiring that the unions asserting rights under the Union Shop Amendment must be "open unions".[7] A logical corollary of this construction is that the union must make membership available to, or at least express its willingness to accept dues for the support of collective bargaining from, those employees of whom it complains, whether before or after their citation for non-compliance with a union shop agreement.

The latest statement of this Court's views is found in *Railway Employees' Department v. Hanson,* (May 21, 1956) 351 U.S. 225, 75 S. Ct. 714, where the majority opinion of Mr. Justice Douglas construes the statute as permitting only a requirement of "financial support" limited to "the work of the union in the realm of collective bargaining" (at p. 235) and concludes:

> "We pass narrowly on Sec. 2, Eleventh of the Railway Labor Act. We only hold that the requirement of

[7] *Railway Employees' Department v. Hanson,* (1956) 351 U.S. 225, 75 S. Ct. 714, discussed *infra.*

> financial support of the collective-bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause".

And Mr. Justice Frankfurter, in his concurring opinion, accepts the validity of the Union Shop Amendment and agreements based thereon subject to this condition:

> ". . . provided, of course, that the unions be open unions, i.e., that membership in the unions be available on ordinary, appropriate terms".

The language of these opinions suggests that the great power conferred on the Brotherhoods by the Union Shop Amendment is a power conferred in trust, and that they must accordingly keep the door of membership open at all times to those whom they would coerce; that the union is permitted to require no more than that the defaulting or recalcitrant member shall either agree to support the union or be discharged, and that this election should continue as long as he continues to be an employee.

5. *Membership in Other National Unions*

In the case of all, or practically all, of the petitioners it is alleged and conceded that they had become members of other unions recognized as "national in scope" prior to the issuance of the final orders dismissing them.[8] This

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[8] Complaint, Par. 8 (Applts. App. 7-8) alleges that "each of the plaintiffs in the class joined at least one other labor union which was national in scope and which was organized in accordance with the Railway Labor Act and which qualified as a union to which each of the said plaintiffs could properly change his membership under the said union shop provision of the Railway Labor Act and still retain his job together with seniority and other privileges. The date of such affiliation varied with each of the said plaintiffs, the said dates ranging from about September, 1951, through 1954. Some examples of the aforementioned labor unions which the said plaintiffs joined are Switchmen's Union of North America and Order of Railway Conductors".

raises the further question, never before submitted to this Court, whether a default under a union shop agreement, dependent for its validity on the Union Shop Amendment, may be cured by acquiring membership in another approved union pending the hearing of complaints on such default; that is to say, does the statute protect the employee against discharge if he is a member of another union "national in scope" prior to and at the time of issuance of the carrier's order discharging him?

If, as indicated by *Railway Employees' Department v. Hanson, supra*, the statute should be narrowly construed for the protection of the individual's "job rights" against forfeiture, that is, his guaranteed seniority virtually assuring lifetime employment, and his intangible right to work and right of free association, then a prior default, especially if incurred inadvertently and in good faith, should be cured by any subsequent compliance with the statutory conditions down to the time when the forfeiture is suffered. The non-unionist should be welcomed at any time into the fold of orthodox unionism rather than forever excluded.

CONCLUSION

From the foregoing statement the issues in this case emerge as significant for the interpretation and administration of the Railway Labor Act and as issues upon which the existing law is in a state of confusion:

(1) Where a union shop agreement creates a system board of adjustment, consisting of a representative of the union and a representative of the carrier (a third or "neutral" member being appointed only in case of disagreement), as "the sole and exclusive method for determining disputes" under such agreement, does it thereby withdraw jurisdiction from the National Railroad Adjustment Board?

(2) Where such system board is specifically granted final and exclusive appellate jurisdiction of disputes between a union and non-member employees, but only on appeal by the union, and such employees have fully exhausted the administrative remedies afforded them under the hearing procedure subordinate to the system board set up in the agreement, are they entitled to judicial review of the administrative decisions rendered against them?

(3) May the individual employee establish, in such judicial proceeding, that another union to which he belongs is in fact "national in scope", in order to defeat his discharge?

(4) May the individual defeat his discharge by

(a) Offering to rejoin the bargaining union and pay his dues prior to such discharge?

(b) Showing that he became a member of another union concededly "national in scope" prior to his discharge?

As to questions (2) and (3), decisions of the highest courts of two circuits are in direct and admitted conflict, and the decision of the Fourth Circuit Court of Appeals in the instant case in principle aligns it with one of them, although it finds jurisdiction to be in a different board.

As to question (4), opinion has been expressed by two district courts that a default once incurred is not curable by subsequent action.[9] We submit that such a conclusion is in conflict with the basic trend in interpretation of the Railway Labor Act by this Court.

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[9] *Alabaugh v. Baltimore & O. R. Co.*, (D. Ct. Md. 1954) 125 F. Supp. 401; *Bohnen v. Baltimore & Ohio Chicago Term.*, (D. Ct. Ind. 1954) 125 F. Supp. 463. The same point was implicitly decided in the instant case both by the District Court and by the Court of Appeals.

For the foregoing reasons, issuance of the writ of certiorari to the Court of Appeals for the Fourth Circuit is believed to be essential to the orderly administration of the Railway Labor Act and the correct disposition of numerous cases arising thereunder.

Respectfully submitted,

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APPENDIX A

TITLE 45, U. S. C., SECTIONS 152 AND 153 (THE RAILWAY LABOR ACT, SECTIONS 2 AND 3):

The Union Shop Amendment to the Railway Labor Act, Public Law 914, 81st Congress, appears as Section 152 Eleventh of the Act.

[The more significant portions of these sections appear in bold-face type]

§152.

GENERAL DUTIES.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. **No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions * * *.**

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract